

International Law Studies—Volume 36

International Law Solutions

SITUATION III

NEUTRALITY, 1914-1936

In what respects has the attitude of the United States as a neutral changed in the period from August 4, 1914, to February 29, 1936?

CONCLUSION

From August 4, 1914, to April 6, 1917, the United States, as a neutral state, followed its long established neutrality policy which was in general accord with accepted international law.

The Joint Resolution of February 29, 1936, embodied a nationalistic policy in many respect divergent from the prior policy of the United States and from the generally accepted doctrines of international law.

The change in 1935-36 to a doctrine for the most part nationalistic has placed nationals of the United States under restrictions beyond those imposed by international law.

NOTES

Domestic neutrality regulation.—Since late in the eighteenth century, it has been customary for states to adopt neutrality laws in order that their citizens might, in advance, know their rights and duties in case of foreign war. Foreign states might, if contemplating war, properly estimate the significance of these laws in laying out war plans. A state might, if planning for war against a state having a large commerce with a state the neutrality laws of which prohibited export of all

articles of the nature of contraband, find the laws of the neutral more serviceable than the maintenance of a force to visit and search the neutral ships for contraband.

The accepted international laws of neutrality apply in relations with states not parties to treaty agreements upon special neutrality laws. Confusion may therefore arise in regard to the rights of neutral citizens under identical situations but with respect to different states. Domestic neutrality laws do not necessarily imply any reciprocal regulations among other states. Domestic laws which embody the rights and duties which a state proposes to maintain must, to be internationally effective, approximate the generally accepted international law of neutrality. Any wide departure from this law may give rise to claims upon the part of one or the other belligerent, or in certain cases on the part of another neutral.

Attitude of the United States.—The United States has considered itself as the great leader in the development of the law of neutrality. The position of the United States defined by Washington, April 22, 1793, embodied in the Act of Congress of June 5, 1794, and in the neutrality laws of 1818, clarified the principles of neutrality as understood in the United States in the early part of the nineteenth century.

It is evident that some of the confusion in regard to neutrality was consequent upon the lack of definiteness in regard to the concept of war. An imperfect war might have as a corollary an imperfect neutrality. The existence of privateering added to the difficulty in demanding and in enforcing exact conformity to any rules.

The Declaration of Paris of April 16, 1856, announcing the abolition of privateering, prescribing the treatment of enemy and of neutral goods and defining effective blockade, while not adhered to by the United

States, was followed by a convention with Peru, signed July 22, 1856, and containing similar provisions in regard to goods which, in the preamble, were stated to be "in accordance with the present state of civilization" and as "permanent and immutable."

Accepted restrictions.—Since the Treaty of Washington, 1871, and the Geneva Award in the case of the *Alabama*, neutrality proclamations have usually prohibited the sending out of the jurisdiction any vessel built, armed, or equipped within the jurisdiction with the intent that it should be employed in the service of a belligerent then engaged in war. It has been proposed that this principle be extended to a much wider range so as to include aircraft, tanks and similar instruments of war. Some have suggested extending the prohibited list of all war material.

The internationally accepted restrictions apply, however, to ships built or sent out under contract or with intent to serve one of the belligerents and not to all the articles or materials that the belligerent might include in a list of contraband. Neutrals under ordinary conditions maintain that the burden of the war should rest upon the belligerents and that neutrals so far as possible be free from interference.

Whether the principles set forth by Pinckney, Marshall, and Gerry in 1798 in a long communication to the French Minister of Exterior Relations, Talleyrand, still apply may be debated. They said:

"The right of one nation to exchange with another the surplus produce of its labour, for those articles which may supply its wants or administer to its comfort, is too essential to have been ever classed among those admitted to be in any degree doubtful. It is a right in ceding which a nation would cede the privilege of regulating its own interests and providing for its own welfare. When any two nations shall choose to make war on each other, they have never been considered, nor can they be considered as thereby authorizing themselves to impair the essential rights of those who may choose to remain at peace. Consequently these rights, the free exercise of which is

essential to its interest and welfare, must be retained by a neutral power, whatever nations may be involved in a war.

"The right of a belligerent to restrain a neutral from assisting his enemy by supplying him with those articles which are defined as contraband, has been universally submitted to; but to cut off all intercourse between neutrals and an enemy, to declare that any single article which may have come from the possessions of an enemy, whoever may be its owner, shall of itself be sufficient to condemn both vessel and cargo, is to exercise a control over the conduct of neutrals which war can never give, and which is alike incompatible with their dignity and their welfare.

"The rights of belligerents are the same. If this might be exercised by one, so might it be exercised by every other. If it might be exercised in the present, so it might be exercised in every future war. This decree is, therefore, on the part of France, the practical assertion of a principle which would destroy all direct or circuitous commerce between belligerent and neutral powers, which would often interrupt the business of large portion of the world, and withdraw or change the employment of a very considerable portion of the human race.

"This is not all. It is the exercise of a power which war is not admitted to give, and which, therefore, may be assumed in peace as well as war.

"It essentially affects the internal economy of nations, and deranges that course of industry which they have a right to pursue, and on which their prosperity depends.

"To acquiesce, therefore, in the existing state of things, under a principle so extensive and so pernicious, is to establish a precedent for national degradation which can never cease to apply, and which will authorize any measures which power may be disposed to practise." (3 State Papers of the U. S., 1797-1801, p. 298.)

Proclamation of neutrality, United States, 1914.—The President of the United States issued a proclamation on August 4, 1914, setting forth in considerable detail the attitude of the Government upon the subject of neutrality.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

Whereas a state of war unhappily exists between Austria-Hungary and Servia and between Germany and Russia and between Germany and France; And Whereas the United States is on terms of friendship and amity with the contending powers, and with the persons inhabiting their several dominions;

And Whereas there are citizens of the United States residing within the territories or dominions of each of the said belligerents

and carrying on commerce, trade, or other business or pursuits therein;

And Whereas there are subjects of each of the said belligerents residing within the territory or jurisdiction of the United States, and carrying on commerce, trade, or other business or pursuits therein;

And Whereas the laws and treaties of the United States, without interfering with the free expression of opinion and sympathy, or with the commercial manufacture or sale of arms or munitions of war, nevertheless impose upon all persons who may be within their territory and jurisdiction the duty of an impartial neutrality during the existence of the contest;

And Whereas it is the duty of a neutral government not to permit or suffer the making of its waters subservient to the purposes of war;

Now, Therefore, I, WOODROW WILSON, President of the United States of America, in order to preserve the neutrality of the United States and of its citizens and of persons within its territory and jurisdiction, and to enforce its laws and treaties, and in order that all persons, being warned of the general tenor of the laws and treaties of the United States in this behalf, and of the law of nations, may thus be prevented from any violation of the same, do hereby declare and proclaim that by certain provisions of the act approved on the 4th day of March, A. D. 1909, commonly known as the "Penal Code of the United States" the following acts are forbidden to be done, under severe penalties, within the territory and jurisdiction of the United States, to-wit:—

1. Accepting and exercising a commission to serve either of the said belligerents by land or by sea against the other belligerent.

2. Enlisting or entering into the service of either of the said belligerents as a soldier, or as a marine, or seaman on board of any vessel of war, letter of marque, or privateer.

3. Hiring or retaining another person to enlist or enter himself in the service of either of the said belligerents as a soldier, or as a marine, or seaman on board of any vessel of war, letter of marque, or privateer.

4. Hiring another person to go beyond the limits or jurisdiction of the United States with intent to be enlisted as aforesaid.

5. Hiring another person to go beyond the limits of the United States with intent to be entered into service as aforesaid.

6. Retaining another person to go beyond the limits of the United States with intent to be enlisted as aforesaid.

7. Retaining another person to go beyond the limits of the United States with intent to be entered into service as aforesaid. (But the said act is not to be construed to extend to a citizen or subject of either belligerent who, being transiently within the United States, shall, on board of any vessel of war, which, at the time of its arrival within the United States, was fitted and equipped as such vessel of war, enlist or enter himself or hire or retain another subject or citizen of the same belligerent, who is transiently within the United States, to enlist or enter himself to serve such belligerent on board such vessel of war, if the United States shall then be at peace with such belligerent.)

8. Fitting out and arming, or attempting to fit out and arm, or procuring to be fitted out and armed, or knowingly being concerned in the furnishing, fitting out, or arming of any ship or vessel with intent that such ship or vessel shall be employed in the service of either of the said belligerents.

9. Issuing or delivering a commission within the territory or jurisdiction of the United States for any ship or vessel to the intent that she may be employed as aforesaid.

10. Increasing or augmenting, or procuring to be increased or augmented, or knowingly being concerned in increasing or augmenting, the force of any ship of war, cruiser, or other armed vessel, which at the time of her arrival within the United States was a ship of war, cruiser, or armed vessel in the service of either of the said belligerents, or belonging to the subjects of either, by adding to the number of guns of such vessels, or by changing those on board of her for guns of a larger calibre, or by the addition thereto of any equipment solely applicable to war.

11. Beginning or setting on foot or providing or preparing the means for any military expedition or enterprise to be carried on from the territory or jurisdiction of the United States against the territories or dominions of either of the said belligerents.

And I do hereby further declare and proclaim that any frequenting and use of the waters within the territorial jurisdiction of the United States by the armed vessels of a belligerent, whether public ships or privateers, for the purpose of preparing for hostile operations, or as posts of observation upon the ships of war or privateers or merchant vessels of a belligerent lying within or being about to enter the jurisdiction of the United States, must be regarded as unfriendly and offensive, and in violation of that neutrality which it is the determination of this government to observe; and to the end that the hazard and inconvenience of such apprehended practices may be avoided, I further proclaim and declare that from and after the fifth day of August instant and during the continuance of the present hostilities between Austria-Hungary and Servia, and Germany and Russia and Germany and France, no ship of war or privateer of any belligerent shall be permitted to make use of any port, harbor, roadstead, or waters subject to the jurisdiction of the United States as a station or place of resort for any warlike purpose or for the purpose of obtaining any facilities of warlike equipment; and no ship of war or privateer of either belligerent shall be permitted to sail out of or leave any port, harbor, roadstead, or waters subject to the jurisdiction of the United States from which a vessel of an opposing belligerent (whether the same shall be a ship of war, a privateer, or a merchant ship) shall have previously departed until after the expiration of at least twenty-four hours from the departure of such last-mentioned vessel beyond the jurisdiction of the United States.

If any ship of war or privateer of a belligerent shall, after the time this notification takes effect, enter any port, harbor, roadstead, or waters of the United States, such vessel shall be required to depart and to put to sea within twenty-four hours after her entrance into such port, harbor, roadstead, or waters, except in case of stress of weather or of her requiring provisions or things

necessary for the subsistence of her crew, or for repairs; in any of which cases the authorities of the port or of the nearest port (as the case may be) shall require her to put to sea as soon as possible after the expiration of such period of twenty-four hours, without permitting her to take in supplies beyond what may be necessary for her immediate use; and no such vessel which may have been permitted to remain within the waters of the United States for the purpose of repair shall continue within such port, harbor, roadstead, or waters for a longer period than twenty-four hours after her necessary repairs shall have been completed, unless within such twenty-four hours a vessel, whether ship of war, privateer, or merchant ship of an opposing belligerent, shall have departed therefrom, in which case the time limited for the departure of such ship of war or privateer shall be extended so far as may be necessary to secure an interval of not less than twenty-four hours between such departure and that of any ship of war, privateer, or merchant ship of an opposing belligerent which may have previously quit the same port, harbor, roadstead, or waters. No ship of war or privateer of a belligerent shall be detained in any port, harbor, roadstead, or waters of the United States more than twenty-four hours, by reason of the successive departures from such port, harbor, roadstead, or waters of more than one vessel of an opposing belligerent. But if there be several vessels of opposing belligerents in the same port, harbor, roadstead, or waters, the order of their departure therefrom shall be so arranged as to afford the opportunity of leaving alternately to the vessels of the opposing belligerents, and to cause the least detention consistent with the objects of this proclamation. No ship of war or privateer of a belligerent shall be permitted, while in any port, harbor, roadstead, or waters within the jurisdiction of the United States, to take in any supplies except provisions and such other things as may be requisite for the subsistence of her crew, and except so much coal only as may be sufficient to carry such vessel, if without any sail power, to the nearest port of her own country; or in case the vessel is rigged to go under sail, and may also be propelled by steam power, then with half the quantity of coal which she would be entitled to receive, if dependent upon steam alone, and no coal shall be again supplied to any such ship of war or privateer in the same or any other port, harbor, roadstead, or waters of the United States, without special permission, until after the expiration of three months from the time when such coal may have been last supplied to her within the waters of the United States, unless such ship of war or privateer shall, since last thus supplied, have entered a port of the government to which she belongs.

And I do further declare and proclaim that the statutes and the treaties of the United States and the law of nations alike require that no person, within the territory and jurisdiction of the United States, shall take part, directly or indirectly, in the said wars, but shall remain at peace with all of the said belligerents, and shall maintain a strict and impartial neutrality.

And I do hereby enjoin all citizens of the United States, and all persons residing or being within the territory or jurisdiction

of the United States, to observe the laws thereof, and to commit no act contrary to the provisions of the said statutes or treaties or in violation of the law of nations in that behalf.

And I do hereby warn all citizens of the United States, and all persons residing or being within its territory or jurisdiction that, while the free and full expression of sympathies in public and private is not restricted by the laws of the United States, military forces in aid of a belligerent cannot lawfully be originated or organized within its jurisdiction; and that, while all persons may lawfully and without restriction by reason of the afore-said state of war manufacture and sell within the United States arms and munitions of war, and other articles ordinarily known as "contraband of war", yet they cannot carry such articles upon the high seas for the use or service of a belligerent, nor can they transport soldiers and officers of a belligerent, or attempt to break any blockade which may be lawfully established and maintained during the said wars without incurring the risk of hostile capture and the penalties denounced by the law of nations in that behalf.

And I do hereby give notice that all citizens of the United States and others who may claim the protection of this government, who may misconduct themselves in the premises, will do so at their peril, and that they can in no wise obtain any protection from the government of the United States against the consequences of their misconduct.

In Witness Whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this fourth day of August in the year of our Lord one thousand nine hundred and fourteen and of the independence of the United States of America the one hundred and thirty-ninth.

[SEAL]

WOODROW WILSON

By the President:

WILLIAM JENNINGS BRYAN,
Secretary of State.

[No. 1272.]

This proclamation was issued "to preserve the neutrality of the United States and of its citizens and of persons within its territory and jurisdiction, and to enforce its laws and treaties." The proclamation stated that the manufacture and sale of "arms and munitions of war, and other articles ordinarily known as 'contraband of war'" was lawful, but that carrying such articles on the high sea "for the use or service of a belligerent" incurred "the risk of hostile capture and the penalties denounced by the law of nations."

Opinions on neutrality.—In recent years particularly since the slogan, “a war to end wars” was current, there has been effort to convince the public that the contest of 1914-18 attained this object. If this is a fact, the argument would run that since war is no more, then neutrality must manifestly be non-existent.

Another line of writers has pointed to the fact that the so-called laws of neutrality did not operate during 1914-18 with such effectiveness as to commend such laws to further respect. These writers would, therefore, substitute other types of control. Many would resort to collective action against a party declared to be the “aggressor” with an expectation that neutrality would then disappear as the states of the world would be aligned either on the side of the “aggressor” or opposed to the “aggressor”.

Another group has contemplated hopefully a civilization in which each state will exercise a self-restraint that will make a resort to war no longer possible, which again would make neutrality an unnecessary and obsolete concept.

That there should be no more war is certainly a goal to be desired, but one for which preparation does not seem to be immediately made. States are not repealing their neutrality laws, nor have international conventions relating to neutrality been denounced.

Some states are enacting new neutrality legislation, often with the expectation that this legislation will tend to prevent or to limit hostilities. Other states seem to follow the doctrine that as war is international in character, rules in regard to neutrality should regard international practices.

Referring to the policy of President Wilson in the World War, Newton D. Baker, Secretary of War, 1916-18, says in October 1936:

"President Wilson's real preoccupation throughout this whole period was his interest in the restoration of peace and the establishment of a world system in which peace would be possible. All of his actions are, therefore, to be read with that thought in mind." (Foreign Affairs, vol. 15, p. 38.)

In his correspondence with Senator Stone, President Wilson said:

"To forbid our people to exercise their rights for fear we might be called upon to vindicate them would be a deep humiliation indeed."

Recently there has been some advocacy of the abandonment of neutrality on the ground that any attempt to maintain neutrality would bring a state into war. Some would maintain neutral rights in regard to persons, but abandon neutral rights in regard to property. Others would make a sort of trade agreement with each belligerent at the outbreak of war in regard to what might be done without risk, while still others would allow full freedom of action to the belligerents during the war but make claims for violation of rights at the close of the war.

To such propositions a general reply has been that the rights of neutrality have been developed after many efforts by states desirous of keeping out of war and of exercising their rights, while at the same time conceding to the belligerents rights to conduct the war. Those maintaining this position decline to admit that because one state declares war against another state, all other states shall be bound to allow the belligerent states unrestrained freedom of action except as relates to neutral persons. Some see in the proposal to make agreements with belligerents at the outbreak of war the probability that the number and scope of such agreements would be very restricted and that, if not identical in all cases, conflicting claims would be inevitable. As to the proposition of allowing full freedom of action to the belligerents in expectation of adjustment of claims on the re-

turn of peace, it has been pointed out that such adjustment has not proven entirely practicable under previously existing conditions when the rights of neutrals and belligerents were to a considerable degree defined.

It has been often stated that when the belligerents were relatively strong and the neutrals were weak or vacillating, the belligerents would endeavor to extend their rights by action or by interpretation. This is a natural result but does not offer a valid ground for discarding the law. Similarly the fact that the geography of states differs does not modify the international law applicable though it may modify national policy.

Changing neutrality policy.—It is well-known that a change in opinion upon or a changed attitude toward some principle of international law on the part of one nation does not in itself change the law. Nor does a misunderstanding or ignorance of the law relieve a state of its responsibilities. Even though a state may publish in advance its decision to act in a manner not in accord with international law, this advanced notice does not establish a right to act in this fashion. Many of these problems were discussed during the World War, 1914-18.

Some argued that the desire for profits led states into war and that consequently the elimination of profits would keep a state out of war. Since the attempt to apply economic sanctions in the Italo-Ethiopian controversy, 1935-36, there has been less certainty in regard to this. Others have pointed out that embargoes have tended to promote wars and that the effect of application of such a principle is to reduce small states to subserviency to neighboring states having large military resources. It is pointed out that embargoes operate unequally upon the belligerents; to which it is replied that neutrality also operates unequally.

Since the World War, many new panaceas have been proposed, discussed, and adopted with enthusiasm, only to be abandoned when put to any considerable test. Similarly, many of the laws of neutrality failed to operate effectively during the World War when weak neutrals were unable to defend their rights and when strong neutrals were supine or hesitated to maintain principles long regarded as well established.

Neutral rights have since the seventeenth century been developing in the direction of restriction upon arbitrary action of belligerents. The Armed Neutralities of 1780 and 1800 afforded examples of this, and the Armed Neutralities of 1780 helped to make Washington's proclamation of April 22, 1793, more respected. The failure to maintain neutral rights, which have been gained after years of effort, naturally makes possible the extension of belligerent activities, and the maintenance of neutral rights limits the sphere of belligerent action and usually the area of the war.

The Pact of Paris, August 27, 1928, was ratified by many states and in this they condemn recourse to war for the solution of international controversies and renounce it as an instrument of national policy. It was also hailed as making unnecessary any neutrality laws in the future. At the Habana Conference, February 20, 1928, however, a convention on Maritime Neutrality was signed and soon ratified by American states. The President of the United States proclaimed this convention, May 26, 1932. In this convention it is specifically stated in Article 15 that:

"Of the acts of assistance coming from the neutral states, and the acts of commerce on the part of individuals, only the first are contrary to neutrality."

The legislation of the United States under the Joint Resolution of February 29, 1936, would under this Convention be based wholly upon national policy.

Neutrality in war between Bolivia and Paraguay.—One of the most recent occasions upon which neutrality proclamations were issued was during the war between Bolivia and Paraguay. Some of these referred specifically to the Hague Conventions of 1907 and to the Declaration of London of 1909.

Brazil has customarily issued detailed rules in respect to neutrality. Brazil issued such rules in 1933 and as a recent expression of a state in close proximity to the belligerents these are given in full.

Translation.

(Diario Oficial, May 31, 1933.)

Decree No. 22,744 of May 23, 1933, orders that complete neutrality shall be observed during the war between Bolivia and Paraguay.

The Chief of the Provisional Government of the United States of Brazil, considering that in view of the deeply lamentable fact of a war between two American nations, to both of which Brazil is closely bound by ties of old friendship, and by those common interests, principles, and feelings of an international order which constitute the characteristic continental atmosphere of America, Brazil is confronted by the imperious necessity of defining its position as a neutral country:

Considering, that not being a member of the League of Nations, Brazil is not bound by the prescriptions of the Pact, and that, having to affirm its neutrality, it is guided by international law, written and customary, and by the elevated spirit of justice and morality which civilization has inculcated in the conscience of cultured peoples;

Considering, that the General Rules of Neutrality adopted by Brazil during the World War, prior to having been drawn into it, and which were established by decree No. 11,037 of August 4, 1914, and completed or modified by subsequent acts, do not fully satisfy the requirements of the present moment, because, at the time of their publication war in another continent was contemplated, the acts of belligerency on the sea being those which would most preoccupy the country, whereas now the strife is between neighboring and mediterranean nations, problems of river navigation have arisen, and while the international spirit has greatly increased during the past years ideas regarding war have changed considerably;

Considering, that these observations show, further, that the rules regarding neutrality on land and sea, mentioned in Conventions Nos. 5 and 13 of The Hague, in 1907, published in Brazil, which signed them, and approved them by Decree No. 10,719 of February 4, 1914, although positive international law, now demand modifications, inspired by a more firmly based doctrine in order to meet the special situation now presented;

Considering, that while it has not yet ratified the Convention on Maritime Neutrality which it signed in Habana on February 20, 1928,¹ together with the Nations represented at the Sixth Pan-American Conference, Brazil cannot fail to recognize the great value which it has as a concrete expression of the judicial opinion of neutrality consecrated by American international law;

Considering, that regarding contraband of war, closely related to respect for private property, positive law is very deficient; that the Naval Declaration of London, in 1909 has merely doctrinal value; that the idea of Counselor Paranhos, interpreting Brazilian thought, set forth in the communication addressed to the powers signatory to the Declaration of Paris, of April 16, 1856, continues after 76 years have passed, to be aspired to so as to complete the work of peace and civilization expressed in the maxims then proclaimed and serves better to defend unoffending private property;

Considering, however, that in order to settle the incidents which may arise and to govern the actions of Brazil and the Brazilians, there is the general idea of neutrality, which consists in the neutral State abstaining from taking part directly or indirectly in the action of the belligerents; in not disturbing in any way war operations occurring outside of its territory; in not allowing, within it, acts of hostility; and in having assured the freedom of its peaceful commerce, the expression of its sovereignty, which war abroad cannot reasonably limit; deducing from this last proposition that only the normal purpose of the merchandise and its destiny, can influence its classification as hostile or innocent;

Considering, that for years the idea has been developing of placing the people in a more decisive position in favor of peace, which is the normal state of civilization, but that present conditions have not permitted them to obtain positive results in the sense of preventing war and lending to pacific activities the preeminence to which, undoubtedly they are entitled, the principles above mentioned exist;

Considering, finally, that the Federal Government has received official notification from the Paraguayan Government that Paraguay is in a state of war with Bolivia:

Resolves, that while the said state of war lasts the Rules of Neutrality hereto annexed, signed by the Minister of State for Foreign Affairs, shall be strictly observed and complied with by the Brazilian authorities.

Rio de Janeiro, 23rd of May, 1933, 112th of Independence, and 45th of the Republic.

GETULIO VARGAS

AFRANIO DE MELLO FRANCO

AUGUSTO IGNACIO DO ESPIRITO SANDO CARDOSO

PROTOGENES PEREIRA GUIMARÃES

¹ Ratified by the United States and proclaimed May 26, 1932, see Naval War College, 1935 International Law Situations, Appendix I, p. 115.

RULES OF NEUTRALITY OF BRAZIL

ARTICLE 1. The residents of the United States of Brazil, nationals or foreigners, should abstain from any participation or aid in favor of the belligerents and should not practice any act that may be considered as hostility toward one of the powers at war.

ARTICLE 2. The belligerents shall not be permitted to promote in Brazil the enlistment of their nationals, of Brazilian citizens, or of nationals of other countries, to serve in their armed forces.

ARTICLE 3. The agents of the Federal Government or of the States of Brazil are forbidden to export or to favor directly or indirectly the remittance of war material to either of the belligerents.

ARTICLE 4. The provision of the preceding article does not prevent the free transit, river or land, assured by treaties in effect between Brazil and either of the belligerents.

ARTICLE 5. It is forbidden to the belligerents to make on the land, river, or maritime territory of the United States of Brazil, a base of war operations or to practice acts which may constitute a violation of Brazilian neutrality.

SOLE PARAGRAPH. Disrespect of neutrality is considered an illicit international act, for which the belligerent will answer, it being permitted however to the neutral State to defend its juridical position.

ARTICLE 6. The Federal Government shall use the means at its disposal to prevent the equipment or arming of any vessel which it may have reasonable cause to suppose is destined to engage in hostile operations against one of the belligerents. It shall exercise the same vigilance to prevent the departure from its territory of any vessel destined to cruise or engage in hostile operations and which has been, in waters under its jurisdiction, adapted wholly or in part to the uses of war.

ARTICLE 7. In the ports and anchorages of the United States of Brazil, the war vessels of the belligerents, without in any way increasing their military force, may repair, to the extent indispensable to safe navigation, the damages that they may have suffered.

The Brazilian naval authority shall verify the nature of the repairs to be made and which should be made with the greatest speed possible.

ARTICLE 8. The vessels referred to in the preceding article may only supply themselves in the ports and anchorages of Brazil:

(1) To complete their normal provision of food in times of peace;

(2) To receive fuel, with which to reach the nearest port of their country, or to complete their stores, properly stated.

ARTICLE 9. The war vessels of the belligerents, that take on fuel on a Brazilian port, cannot renew their provisions at the same or another Brazilian port until three months later.

ARTICLE 10. The vessels of the belligerents cannot use the ports, anchorages, and territorial waters of Brazil to increase their military supplies, or to complete their crews. They may, however, utilize the services of the pilots of the country.

ARTICLE 11. The provisions of Articles 7 to 9 do not apply to hospital ships, or to those exclusively employed upon scientific, religious, or philanthropic missions.

ARTICLE 12. When belligerent vessels of war are simultaneously present in a Brazilian port or anchorage, at least forty-eight hours should elapse between the departure of one of them and of the adversary.

The order of departure shall be determined by that of arrival, unless the ship that entered first should be included in one of the cases in which an extended stay is allowed.

A belligerent war vessel cannot leave the Brazilian port or anchorage where it may be until forty-eight hours after the departure of a merchant ship flying the flag of her adversary.

ARTICLE 13. The war vessels of the belligerents may normally delay at a Brazilian port or anchorage forty-eight hours. A longer stay will be allowed them:

(1) When the repairs indispensable to the continuance of their journey cannot be finished in less time.

(2) When there is a material impediment to their departure.

The Federal Government shall determine, according to circumstances, the length of the delay of the vessel.

ARTICLE 14. If, in spite of notification made by the property authority, the belligerent war vessel does not leave the Brazilian port, the Federal Government shall take the measures considered necessary to render the ship incapable of navigating for the duration of the war.

Should the commander of the belligerent vessel not wish to heed the notification received, for an unacceptable reason, the Federal Government shall order its military authorities to use force, so that its decision shall be complied with.

ARTICLE 15. When a belligerent vessel has to be detained in Brazil the officers and crew shall also be held.

The officers and the crew may be lodged in another ship or on land and may be subjected to the restrictive measures which seem necessary to impose. However, there will be kept on board the war vessel the men required for its preservation. The officers may remain at liberty, by signing a written obligation under word of honor that they will not leave the place designated on Brazilian territory, without authorization from the Minister of Marine.

ARTICLE 16. The captures made by either of the belligerents may only be brought to a Brazilian port on account of failure of navigation, bad weather, lack of fuel or food supplies, or to discharge merchandise destined for Brazil.

ARTICLE 17. The war vessels, which, being pursued by the enemy, and which, to avoid immediate attack, take refuge in a Brazilian port, will be detained there and disarmed.

ARTICLE 18. Troops or isolated soldiers who cross the frontiers of Brazil shall be disarmed or interned far from the seat of war. The officers may remain at liberty under the conditions established in Article 15, second part, *in fine*, the Minister of War being in this case the proper authority to permit the retirement of those interned from the place designated for their residence.

ARTICLE 19. Escaped prisoners who take refuge in Brazil will remain at liberty, a place of residence, however, may be designated for them when this measure appears necessary.

ARTICLE 20. Interned belligerents shall be treated according to the precepts of international law.

ARTICLE 21. Belligerent airplanes may not fly over the territory or jurisdictional waters of Brazil without previous authorization. Those not authorized that land on Brazilian territory or waters will be detained.

Military airplanes will not be given authorization to fly over Brazilian territory.

RIO DE JANEIRO, *May 23, 1933.*

AFRANIO DE MELLO FRANCO.

Ministry of foreign affairs.

National and international neutrality laws.—A state may at its discretion restrict the range of action of its nationals when it is a neutral. Domestic neutrality laws do not necessarily have any effect upon the international law of neutrality either in limiting or extending its scope. The nationals of a state are responsible for the observance of its laws. In 1912 the Acting Secretary of State, after referring to the Hague Conventions of 1907 in regard to neutrality and to the general laws of neutrality, said of the American neutrality laws:

"The situation is somewhat different, however, with reference to the so-called neutrality statutes which have been enacted by this Government, which, going beyond the provisions of international law, as set forth in the above-quoted extracts of the convention, do make illegal certain acts specified in the statutes, even when no state of belligerency exists, such acts being directed against the established government of a country with which this Government is at peace. But, as your excellency will at once recognize, and as has been heretofore declared by this Department, the duties of neutrality under the law of nations can not be either expanded or contracted by national legislation. The United States, for instance, has here in excessive caution required from its citizens duties more stringent than those imposed by the law of nations; but those statutes, while they may make offenders penally liable in this country do not themselves put either these persons or this Government under any extraterritorial obligation. Our own statutes bind only our own Government and citizens and those within our jurisdiction. If they impose on us a larger duty than is imposed upon us by international law, they do not correspondingly enlarge our duties to foreign nations." (Foreign Relations. U. S., 1912, p. 741.)

Act of Congress, March 14, 1912.—The United States has found it desirable to prohibit exportation of arms or munitions of war even when a condition of domestic violence and not of war exists. The Act of Congress of March 14, 1912, provides:

“That whenever the President shall find that in any American country conditions of domestic violence exist which are promoted by the use of arms or munitions of war procured from the United States, and shall make proclamation thereof, it shall be unlawful to export except under such limitations and exceptions as the President shall prescribe any arms or munitions of war from any place in the United States to such country until otherwise ordered by the President or by Congress.” (37 Stat. 630.)

Neutrality and contraband, 1914.—In 1914 there were new problems arising owing to changing conditions in the conduct of war. These came in increasing number to the Department of State, and a general circular was issued.

Circular of the Department of State of the United States with Reference to Neutrality and Trade in Contraband. October 15, 1914.

The Department of State has received numerous inquiries from American merchants and other persons as to whether they could sell to governments or nations at war contraband articles without violating the neutrality of the United States, and the Department has also received complaints that sales of contraband were being made on the apparent supposition that they were unneutral acts which this Government should prevent.

In view of the number of communications of this sort which have been received it is evident that there is a widespread misapprehension among the people of this country as to the obligations of the United States as a neutral nation in relation to trade in contraband and as to the powers of the executive branch of the government over persons who engage in it. For this reason it seems advisable to make an explanatory statement on the subject for the information of the public.

In the first place it should be understood that, generally speaking, a citizen of the United States can sell to a belligerent government or its agent any article of commerce which he pleases. He is not prohibited from doing this by any rule of international law, by any treaty provisions, or by any statute of the United States. It makes no difference whether the articles sold are exclusively for war purposes, such as firearms, explosives, etc., or are foodstuffs, clothing, horses, etc., for the use of the army or navy of the belligerent.

Furthermore, a neutral government is not compelled by international law, by treaty, or by statute to prevent these sales to a belligerent. Such sales, therefore, by American citizens do not in the least affect the neutrality of the United States.

It is true that such articles as those mentioned are considered contraband and are, outside the territorial jurisdiction of a neutral nation, subject to seizure by an enemy of the purchasing government, but it is the enemy's duty to prevent the articles reaching their destination, not the duty of the nation whose citizens have sold them. If the enemy of the purchasing nation happens for the time to be unable to do this that is for him one of the misfortunes of war; the inability, however, imposes on the neutral government no obligation to prevent the sale.

Neither the President nor any executive department of the Government possesses the legal authority to interfere in any way with trade between the people of this country and the territory of the belligerent. There is no act of Congress conferring such authority or prohibiting traffic of this sort with European nations, although in the case of neighboring American Republics Congress has given the President power to proclaim an embargo on arms and ammunition when in his judgment it would tend to prevent civil strife.

For the Government of the United States itself to sell to a belligerent nation would be an unneutral act, but for a private individual to sell to a belligerent any product of the United States is neither unlawful nor unneutral, nor within the power of the Executive to prevent or control.

The foregoing remarks, however, do not apply to the outfitting or furnishing of vessels in American ports or of military expeditions on American soil in aid of a belligerent. These acts are prohibited by the neutrality laws of the United States.

DEPARTMENT OF STATE,
October 15, 1914.

(Foreign Relations, U. S., 1914 Supplement, p. 573.)

Reply of Department of State on arms embargo.—In the correspondence between Senator Stone, Chairman of the Senate Committee on Foreign Relations, and the Secretary of State in January 1915, questions were raised in regard to the attitude of the Government of the United States upon restrictions upon trade in contraband.

On January 8, 1915, Senator Stone writes:

"DEAR MR. SECRETARY: As you are aware, frequent complaints or charges are made in one form or another through the press that this Government has shown partiality to Great Britain, France, and Russia as against Germany and Austria during the present war between those powers; in addition to which I have received numerous letters to the same effect from sympathizers with Germany and Austria. (Foreign Relations, U. S., 1914, Supplement, p. vi.)

Among the other complaints to which Senator Stone calls attention are :

"4. Submission without protest to English violations of the rules regarding absolute and conditional contraband, as laid down—

"(a) In the Hague conventions ;

"(b) In international law ;

"(c) In the Declaration of London.

"5. Submission without protest to inclusion of copper in the list of absolute contraband.

"6. Submission without protest to interference with American trade to neutral countries—

"(a) In conditional contraband ;

"(b) In absolute contraband.

"7. Submission without protest to interruption of trade in conditional contraband consigned to private persons in Germany and Austria, thereby supporting the policy of Great Britain to cut off all supplies from Germany and Austria.

"8. Submission to British interruption of trade in petroleum, rubber, leather, wool, etc.

"9. No interference with the sale to Great Britain and her allies of arms, ammunition, horses, uniforms, and other munitions of war, although such sales prolong the war.

"10. No suppression of sale of dumdum bullets to Great Britain (Ibid., p. vii.)

To these the Secretary of State replied *seriatim* on January 20, 1915.

(4) *Submission without protest to British violations of the rules regarding absolute and conditional contraband as laid down in The Hague conventions, the declaration of London, and international law.*

There is no Hague convention which deals with absolute or conditional contraband, and, as the declaration of London is not in force, the rules of international law only apply. As to the articles to be regarded as contraband, there is no general agreement between nations. It is the practice for a country, either in time of peace or after the outbreak of war, to declare the articles which it will consider as absolute or conditional contraband. It is true that a neutral Government is seriously affected by this declaration, as the rights of its subjects or citizens may be impaired. But the rights and interests of belligerents and neutrals are opposed in respect to contraband articles and trade and there is no tribunal to which questions of difference may be readily submitted.

The record of the United States in the past is not free from criticism. When neutral this Government has stood for a restricted list of absolute and conditional contraband. As a belligerent, we have contended for a liberal list, according to our conception of the necessities of the case.

The United States has made earnest representations to Great Britain in regard to the seizure and detention by the British authorities of all American ships or cargoes bona fide destined to neutral ports on the ground that such seizures and detentions were contrary to the existing rules of international law. It will be recalled, however, that American courts have established various rules bearing on these matters. The rule of "continuous voyage" has been not only asserted by American tribunals but extended by them. They have exercised the right to determine from the circumstances whether the ostensible was the real destination. They have held that the shipment of articles of contraband to a neutral port "to order," from which, as a matter of fact, cargoes had been transshipped to the enemy, is corroborative evidence that the cargo is really destined to the enemy instead of to the neutral port of delivery. It is thus seen that some of the doctrines which appear to bear harshly upon neutrals at the present time are analogous to or outgrowths from policies adopted by the United States when it was a belligerent. The Government therefore can not consistently protest against the application of rules which it has followed in the past, unless they have not been practiced as heretofore.

(5) *Acquiescence without protest to the inclusion of copper and other articles in the British lists of absolute contraband.*

The United States has now under consideration the question of the right of a belligerent to include "copper unwrought" in its list of absolute contraband instead of in its list of conditional contraband. As the Government of the United States has in the past placed "all articles from which ammunition is manufactured" in its contraband list, and has declared copper to be among such materials, it necessarily finds some embarrassment in dealing with the subject.

Moreover, there is no instance of the United States acquiescing in Great Britain's seizure of copper shipments. In every case in which it has been done vigorous representations have been made to the British Government, and the representatives of the United States have pressed for the release of the shipments.

(6) *Submission without protest to interference with American trade to neutral countries in conditional and absolute contraband.*

The fact that the commerce of the United States is interrupted by Great Britain is consequent upon the superiority of her navy on the high seas. History shows that whenever a country has possessed that superiority our trade has been interrupted and that few articles essential to the prosecution of the war have been allowed to reach its enemy from this country. The department's recent note to the British Government, which has been made public, in regard to detentions and seizures of American vessels and cargoes, is a complete answer to this complaint.

Certain other complaints appear aimed at the loss of profit in trade, which must include at least in part trade in contraband with Germany; while other complaints demand the prohibition of trade in contraband, which appear to refer to trade with the allies.

(7) *Submission, without protest to interruption of trade in conditional contraband consigned to private persons in Germany and Austria, thereby supporting the policy of Great Britain to cut off all supplies from Germany and Austria.*

As no American vessel so far as known has attempted to carry conditional contraband to Germany or Austria-Hungary, no ground of complaint has arisen out of the seizure or condemnation by Great Britain of an American vessel with a belligerent destination. Until a case arises and the Government has taken action upon it, criticism is premature and unwarranted. The United States in its note of December 28 to the British Government strongly contended for the principle of freedom of trade in articles of conditional contraband not destined to the belligerent's forces.

(8) *Submission to British interference with trade in petroleum, rubber, leather, wool, etc.*

Petrol and other petroleum products have been proclaimed by Great Britain as contraband of war. In view of the absolute necessity of such products to the use of submarines, aeroplanes, and motors, the United States Government has not yet reached the conclusion that they are improperly included in a list of contraband. Military operations to-day are largely a question of motive power through mechanical devices. It is therefore difficult to argue successfully against the inclusion of petroleum among the articles of contraband. As to the detention of cargoes of petroleum going to neutral countries, this Government has thus far successfully obtained the release in every case of detention or seizure which has been brought to its attention.

Great Britain and France have placed rubber on the absolute contraband list and leather on the conditional contraband list. Rubber is extensively used in the manufacture and operation of motors and, like petrol, is regarded by some authorities as essential to motive power to-day. Leather is even more widely used in cavalry and infantry equipment. It is understood that both rubber and leather, together with wool, have been embargoed by most of the belligerent countries. It will be recalled that the United States has in the past exercised the right of embargo upon exports of any commodity which might aid the enemy's cause.

(9) *The United States has not interfered with the sale to Great Britain and her allies of arms, ammunition, horses, uniforms, and other munitions of war, although such sales prolong the conflict.*

There is no power in the Executive to prevent the sale of ammunition to the belligerents.

The duty of a neutral to restrict trade in munitions of war has never been imposed by international law or by municipal statute. It has never been the policy of this Government to prevent the shipment of arms or ammunition into belligerent territory, except in the case of neighboring American Republics, and then only when civil strife prevailed. Even to this extent the belligerents in the present conflict, when they were neutrals, have never, so far as the records disclose, limited the sale of munitions

of war. It is only necessary to point to the enormous quantities of arms and ammunition furnished by manufacturers in Germany to the belligerents in the Russo-Japanese war and in the recent Balkan wars to establish the general recognition of the propriety of the trade by a neutral nation.

It may be added that on the 15th of December last the German ambassador, by direction of his Government, presented a copy of a memorandum of the Imperial German Government which, among other things, set forth the attitude of that Government toward traffic in contraband of war by citizens of neutral countries. The Imperial Government stated that "under the general principles of international law, no exception can be taken to neutral States letting war material go to Germany's enemies from or through neutral territory," and that the adversaries of Germany in the present war are, in the opinion of the Imperial Government, authorized to "draw on the United States contraband of war and especially arms worth billions of marks." These principles, as the ambassador stated, have been accepted by the United States Government in the statement issued by the Department of State on October 15 last, entitled "Neutrality and trade in contraband." Acting in conformity with the propositions there set forth, the United States has itself taken no part in contraband traffic, and has, so far as possible, lent its influence toward equal treatment for all belligerents in the matter of purchasing arms and ammunition of private persons in the United States.

(10) *The United States has not suppressed the sale of dumdum bullets to Great Britain.*

On December 5 last the German ambassador addressed a note to the department, stating that the British Government had ordered from the Winchester Repeating Arms Co. 20,000 "riot guns," model 1897, and 50,000,000 "buckshot cartridges" for use in such guns. The department replied that it saw a published statement of the Winchester Co., the correctness of which the company has confirmed to the department by telegraph. In this statement the company categorically denies that it has received an order for such guns and cartridges from or made any sales of such material to the British Government, or to any other Government engaged in the present war. The ambassador further called attention to "information, the accuracy of which is not to be doubted," that 8,000,000 cartridges fitted with "mushroom bullets" had been delivered since October of this year by the Union Metallic Cartridge Co. for the armament of the English army. In reply the department referred to the letter of December 10, 1914, of the Remington Arms-Union Metallic Cartridge Co., of New York, to the ambassador, called forth by certain newspaper reports of statements alleged to have been made by the ambassador in regard to the sales by that company of soft-nosed bullets.

From this letter, a copy of which was sent to the department by the company, it appears that instead of 8,000,000 cartridges having been sold, only a little over 117,000 were manufactured and 109,000 were sold. The letter further asserts that these cartridges

were made to supply a demand for a better sporting cartridge with a soft-nosed bullet than had been manufactured theretofore, and that such cartridges can not be used in the military rifles of any foreign powers. The company adds that its statements can be substantiated and that it is ready to give the ambassador any evidence that he may require on these points. The department further stated that it was also in receipt from the company of a complete detailed list of the persons to whom these cartridges were sold, and that from this list it appeared that the cartridges were sold to firms in lots of 20 to 2,000 and one lot each of 3,000, 4,000, and 5,000. Of these only 960 cartridges went to British North America and 100 to British East Africa.

The department added that, if the ambassador could furnish evidence that this or any other company is manufacturing and selling for the use of the contending armies in Europe cartridges whose use would contravene The Hague conventions, the department would be glad to be furnished with this evidence, and that the President would, in case any American company is shown to be engaged in this traffic, use his influence to prevent, so far as possible, sales of such ammunition to the powers engaged in the European war, without regard to whether it is the duty of this Government, upon legal or conventional grounds, to take such action.

The substance of both the ambassador's note and the department's reply have appeared in the press.

The department has received no other complaints of alleged sales of dum-dum bullets by American citizens to belligerent Governments. (Ibid., p. ix.)

Restrictions on clearance.—There were attempts to use the ports and waters of the United States as bases, and Congress took cognizance of this by adopting a Joint Resolution:

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That, from and after the passage of this resolution, and during the existence of a war to which the United States is not a party, and in order to prevent the neutrality of the United States from being violated by the use of its territory, its ports, or its territorial waters as the base of operations for the armed forces of a belligerent, contrary to the obligations imposed by the law of nations, the treaties to which the United States is a party, or contrary to the statutes of the United States, the President be, and he is hereby, authorized and empowered to direct the collectors of customs under the jurisdiction of the United States to withhold clearance from any vessel, American or foreign, which he has reasonable cause to believe to be about to carry fuel, arms, ammunition, men, or supplies to any warship, or tender, or supply ship of a belligerent nation, in violation of the obligations of the United States as a neutral nation.

In case any such vessel shall depart or attempt to depart from the jurisdiction of the United States without clearance for any of the purposes above set forth, the owner or master or person or persons having charge or command of such vessel shall severally be liable to a fine of not less than \$2,000 nor more than \$10,000, or to imprisonment not to exceed two years, or both, and, in addition, such vessel shall be forfeited to the United States.

That the President of the United States be, and he is hereby, authorized and empowered to employ such part of the land or naval forces of the United States as shall be necessary to carry out the purposes of this resolution.

That the provisions of this resolution shall be deemed to extend to all land and water, continental or insular, within the jurisdiction of the United States.

Approved, March 4, 1915."

(38 Stat. 1226.)

German attitude on trade in arms, 1915.—On April 4, 1915, the German Ambassador delivered to the American Secretary of State a memorandum on German-American trade and the question of delivery of arms. He refers to the British Orders-in-Council as "one-sidedly" modifying the principles of international law and leading to unlawful interference with American commerce. He then says:

"Then there is also the attitude of the United States in the question of the exportation of arms. The Imperial Government feels sure that the United States Government will agree that in questions of neutrality it is necessary to take into consideration not only the formal aspect of the case, but also the spirit to which the neutrality is carried out.

"The situation in the present war differs from that of any previous war. Therefore any reference to arms furnished by Germany in former wars is not justified, for then it was not a question *whether* war material should be supplied to the belligerents, but *who* should supply it in competition with other nations. In the present war all nations having a war material industry worth mentioning are either involved in the war themselves or are engaged in perfecting their own armaments, and have therefore laid an embargo against the exportation of war material. The United States is accordingly the only neutral country in a position to furnish war materials. The conception of neutrality is thereby given a new purport, independently of the formal question of hitherto existing law. In contradiction thereto, the United States is building up a powerful arms industry in the broadest sense, the existing plants not only being worked but enlarged by all available means, and new ones built. The international conventions for the protection of the rights of neutral nations doubtless sprang from the necessity of protect-

ing the existing industries of neutral nations as far as possible from injury to their business. But it can in no event be in accordance with the spirit of true neutrality if, under the protection of such international stipulations, an entirely new industry is created in a neutral state, such as is the development of the arms industry in the United States, the business whereof, under the present conditions, can benefit only the belligerent powers.

"This industry is actually delivering goods only to the enemies of Germany. The theoretical willingness to supply Germany also, if shipments thither were possible, does not alter the case. If it is the will of the American people that there shall be a true neutrality, the United States will find means of preventing this one-sided supply of arms or at least of utilizing it to protect legitimate trade with Germany, especially that in food-stuffs." (Foreign Relations, U. S. 1915, Supplement, p. 159.)

Attitude of United States, August 1915.—In a long note to be presented by the American Ambassador in Austria-Hungary to the Foreign Office, the Secretary of State expressed surprise that it could be thought that changing conditions during a war could affect neutral traffic in arms and ammunition or that neutrality implied an obligation to equalize trade opportunities. The Secretary of State maintained that to close American markets to either belligerent would be contrary to the principles for which the United States had stood.

The American Secretary of State further said:

"But, in addition to the question of principle, there is a practical and substantial reason why the Government of the United States has from the foundation of the Republic to the present time advocated and practiced unrestricted trade in arms and military supplies. It has never been the policy of this country to maintain in time of peace a large military establishment or stores of arms and ammunition sufficient to repel invasion by a well-equipped and powerful enemy. It has desired to remain at peace with all nations and to avoid any appearance of menacing such peace by the threat of its armies and navies. In consequence of this standing policy the United States would, in the event of attack by a foreign power, be at the outset of the war seriously, if not fatally, embarrassed by the lack of arms and ammunition and by the means to produce them in sufficient quantities to supply the requirements of national defense. The United States has always depended upon the right and power to purchase arms and ammunition from neutral nations in case of foreign attack. The right, which it claims for itself, it cannot deny to others.

"A nation whose principle and policy it is to rely upon international obligations and international justice to preserve its political and territorial integrity, might become the prey of an aggressive nation whose policy and practice it is to increase its military strength during times of peace with the design of conquest, unless the nation attacked can, after war had been declared, go into the markets of the world and purchase the means to defend itself against the aggressor.

"The general adoption by the nations of the world of the theory that neutral powers ought to prohibit the sale of arms and ammunition to belligerents would compel every nation to have in readiness at all times sufficient munitions of war to meet any emergency which might arise and to erect and maintain establishments for the manufacture of arms and ammunitions sufficient to supply the needs of its military and naval forces throughout the progress of a war. Manifestly the application of this theory would result in every nation becoming an armed camp, ready to resist aggression and tempted to employ force in asserting its rights rather than appeal to reason and justice for the settlement of international disputes.

"Perceiving, as it does, that the adoption of the principle that it is the duty of a neutral to prohibit the sale of arms and ammunition to a belligerent during the progress of a war would inevitably give the advantage to the belligerent which had encouraged the manufacture of munitions in time of peace and which had laid in vast stores of arms and ammunition in anticipation of war, the Government of the United States is convinced that the adoption of the theory would force militarism on the world and work against that universal peace which is the desire and purpose of all nations which exalt justice and righteousness in their relations with one another." (Foreign Relations, U. S., 1915 Supplement, p. 796.)

Embargoes on arms in 1915.—On August 30, 1915, the Secretary of State by a circular telegram to American diplomatic officers in European neutral countries made inquiry in regard to embargoes.

"Please discreetly ascertain and telegraph whether the country to which you are accredited has embargoed arms and ammunition during the present war in order to conserve them for home use, or not to incur enmity of belligerents, or to maintain neutrality, and whether the sale of arms and ammunition would have been more than a negligible factor in supplying the belligerents. (*Ibid.*, p. 801.)

LANSING."

The replies showed that embargoes on arms are often imposed for domestic reasons. Minister Van Dyke reported September 4, 1915, that the "Netherlands had

embargoed all munitions to retain them for home use."

(Ibid., p. 803.) This was a common reason given, though occasionally "to avoid enmity" was given also.

Portugal had not embargoed arms, nor had Spain, though Spain's policy was "to maintain absolute neutrality and conserve supplies." Italy recognized that sale was lawful under the Hague Convention.

Up to September 16, 1915, it appeared that none of the South American states except Brazil had embargoed arms and ammunition.

China prohibited private commerce in contraband.

Attitude on munitions sale, 1916.—Numerous complaints were made to the Department of State in regard to the failure of the Government to restrict or forbid exports of munitions. It was pointed out to the Department of State that the geographical relations of the belligerents in Europe tended to make the transit of arms from the United States more easy to the Allied than to the Central Powers. It was intimated that to permit freedom of trade in munitions, etc., would under these conditions be unneutral. The Counselor of the Department of State, Mr. Polk, on August 18, 1916, said of this matter:

"If any American citizens, partizans of Germany and Austria-Hungary, feel that this administration is acting in a way injurious to the cause of those countries, this feeling results from the fact that on the high seas the German and Austro-Hungarian naval power has from the commencement of the present war been inferior to the British. It is the business of a belligerent operating on the high seas, not the duty of a neutral, to prevent all trade in contraband from reaching an enemy. Those in this country who sympathize with Germany and Austria-Hungary appear to assume that some obligation rests upon this Government in the performance of its neutral duty to prevent all trade in contraband, and thus to equalize the difference due to the relative naval strength of the belligerents. No such obligation exists. It would be an unneutral act on the part of this Government to adopt such a policy if the Executive had the power to do so. If Germany and Austria-Hungary cannot import contraband from this country, it is not, because of that fact, the duty of the

United States to close its markets to the Allies. The markets of this country are open upon equal terms to all the world, to every nation, belligerent or neutral.

"There is no power in the Executive to prevent the sales of munitions of war to the belligerents. The duty of a neutral to restrict trade in munitions of war has never been imposed by international law or municipal statute. It has never been the policy of this Government to prevent the shipment of arms or ammunition into belligerent territory, except in the case of neighboring American republics, and then only when civil strife prevailed. Even to this extent the belligerents in the present conflict, when they were neutrals, have never, so far as the records disclose, limited the sale of munitions of war. It is only necessary to point to the enormous quantities of arms and ammunitions furnished by manufacturers in Germany to the belligerents in the Russo-Japanese war and the recent Balkan wars to establish the general recognition of the propriety of the trade by a neutral nation.

"It may be added that on the 15th of December, 1914, the German Ambassador, by direction of his Government, presented a copy of a memorandum of the Imperial German Government which, among other things, set forth the attitude of that Government toward traffic in contraband of war by citizens of neutral countries. The Imperial Government stated that 'under the general principles of international law, no exception can be taken to neutral states letting war material go to Germany's enemies from or through neutral territory.'" (Foreign Relations, U. S., 1916 Supplement, p. 9.)

Act of Congress, June 15, 1917.—The Act of Congress of March 14, 1912, was elaborated in later acts as in that of June 15, 1917, which, under conditions of war, provided for a general enforcement:

"Whenever an attempt is made to export or ship from or take out of the United States, any arms or munitions of war, or other articles, in violation of law, or whenever there shall be known or probable cause to believe that any such arms or munitions of war, or other articles, are being or are intended to be exported, or shipped from, or taken out of the United States, in violation of law, the several collectors, naval officers, surveyors, inspectors of customs, and marshals, and deputy marshals of the United States, and every other person duly authorized for the purpose by the President, may seize and detain any articles or munitions of war about to be exported or shipped from, or taken out of the United States, in violation of law, and the vessels or vehicles containing the same, and retain possession thereof until released or disposed of as hereinafter directed. If upon due inquiry as hereinafter provided, the property seized shall appear to have been about to be so unlawfully exported, shipped from, or taken out of the United States, the same shall be forfeited to the United States." (40 Stat. 223.)

In this Act naval officers are specifically authorized to see that the law is observed.

Presidents have from time to time proclaimed that conditions demand the enforcements of these acts.

Brussels protocol, 1908.—On July 22, 1908, and referring to the General Act of the Conference of Brussels of July 2, 1890, a protocol restricting the export of war materials to certain African areas was concluded. The parties to the protocol were Great Britain, the Congo Free-State, France, Germany, Portugal, and Spain.

The protocol provided:

“L'importation de toute espèce d'armes à feu, de munitions, et de poudre destinées à des indigènes ainsi que la vente et la délivrance de toute espèce d'armes à feu, de munitions et de poudre à des indigènes seront suspendues pour la durée de quatre ans à partir du 15 février, 1909, dans la zone désignée au § 2. ces dispositions n'étant pas applicables aux armes, munitions et poudres importées en transit et destinées à des régions en dehors de ladite zone. Il est entendu que les autorités locales pourront dans des cas tout à fait exceptionnels délivrer aux indigènes des armes à feu, des munitions et de la poudre.” (British and Foreign States Papers, vol. 101, p. 176.)

Convention of St. Germain-en-Laye, 1919.—In the preamble of the Convention of St. Germain-en-Laye, September 10, 1919, it was stated that the provision of the Brussels Act of July 2, 1890, and of other conventions “no longer meet present conditions” in regard to trade in arms and ammunition and that special provisions should be agreed upon for certain areas, particularly in Africa and Asia.

This Convention with the Revision of the Act of Berlin, signed at the same time, aimed to prohibit the export of arms, etc., and to supervise the import of arms, etc., in certain areas of Africa and Asia. The plenipotentiaries of the United States signed the Convention of St. Germain-en-Laye, but it was not ratified by the United States till 1934 (49 Stat. 3027), and was not ratified by some of the larger European states.

Article I of this Convention was as follows:

"The High Contracting Parties undertake to prohibit the export of the following arms of war: artillery of all kinds, apparatus for the discharge of all kinds of projectiles explosive or gas-diffusing, flame-throwers, bombs, grenades, machine-guns and rifled small-bore breech-loading weapons of all kinds, as well as the exportation of the ammunition for use with such arms. The prohibition of exportation shall apply to all such arms and ammunition, whether complete or in parts.

"Nevertheless, notwithstanding this prohibition, the High Contracting Parties reserve the right to grant, in respect of arms whose use is not prohibited by International Law, export licenses to meet the requirements of their Governments or those of the Government of any of the High Contracting Parties, but for no other purpose.

"In the case of firearms and ammunition adapted both to war-like and also to other purposes, the High Contracting Parties reserve to themselves the right to determine from the size, destination, and other circumstances of each shipment for what uses it is intended and to decide in each case whether the provisions of this Article are applicable to it."

Restriction on importation of arms and munitions, 1919.—A collective agreement in regard to the importation of arms and munitions in case of the domestic disturbances in China in 1919 was found possible. This was embodied in a note of May 5, 1919, from the Dean of the Diplomatic Corps to the Chinese Acting Minister of Foreign Affairs. The specific part of the agreement follows:

"The Governments of Great Britain, Spain, Portugal, the United States, Russia, Brazil, France and Japan have agreed effectively to restrain their subjects and citizens from exporting to or importing into China arms and munitions of war and material destined exclusively for their manufacture until the establishment of a government whose authority is recognized throughout the whole country and also to prohibit during the above period the delivery of arms and munitions for which contracts have already been made but not executed.

"The Representatives of the Netherlands, Denmark, Belgium and Italy are also in full accord with the above policy, but await the instructions of their respective Government before announcing the adhesion of the latter.

"The Foreign Representatives desire to express the earnest hope that the Chinese Government in keeping with this policy will on their part agree to suspend the issue of permits to import military arms, ammunition and munitions of war and will direct the Customs that the introduction of such articles is absolutely prohibited.

I avail myself, etc.

J. N. JORDAN.

(Foreign Relations, U. S. 1919, vol. I, p. 670.)

Later, September 10, 1919, the United States interpreted the agreement "as including raw material for manufacture of arms and ammunition and has only recently held it to include the machinery used in their manufacture." (Ibid., p. 672.)

Some Governments were not in accord with this interpretation.

Mandates and traffic in arms.—The mandate system introduced by the Treaty of Versailles, 1919, generally provided for the control of the traffic in arms. The document entrusting the mandated area to a mandatory usually contained a specific provision in regard to traffic in arms and referred to the Convention of September 10, 1919:

"The mandatory shall also see that the traffic in arms and ammunition is controlled in accordance with principles analogous to those laid down in the convention relating to the control of the arms traffic signed on September 10, 1919, or in any convention amending the same." (Naval War College, International Law Situations, 1929, p. 50.)

Convention of Geneva, June 17, 1925.—The Convention on Supervision of International Trade in Arms and Ammunition and in Implements of War, Geneva, June 17, 1925, was drawn up with view to introducing "a general and effective system of supervision and publicity" and special supervision for certain areas. In many respects it was more detailed than the Convention of St. Germain-en-Laye of 1919. It enumerated five categories of arms, ammunition, and implements and gave specifications under each category.

The categories were as follows:

"Category I. Arms, ammunition and implements of war exclusively designed and intended for land, sea or aerial warfare.

"Category II. Arms and ammunition capable of use both for military and other purposes.

"Category III. Vessels of war and their armament.

"Category IV. 1. Aircraft, assembled or dismantled. 2. Aircraft engines.

"Category V. 1. Gunpowder and explosives, except common black gunpowder. 2. Arms and ammunition other than those

covered by Categories I and II, such as pistols and revolvers of all models, rifled weapons with a 'break-down' action, other rifled fire-arms of a calibre of less than 6 mm. designed for firing from the shoulder, smooth-bore shot-guns, guns with more than one barrel of which at least one barrel is smooth-bore, fire-arms firing rimfire ammunition, muzzle-loading fire-arms." (League of Nations Document, A-16.1925.IX.)

The provisions for publicity were detailed and special zones were placed under a defined regime. A large number of states signed this convention and Italy and Ethiopia were included. Ratification has not been general, and in case of some of the larger states has been conditional.

The United States and Chaco Arms Embargo, 1934.—A joint resolution of Congress, May 28, 1934, placed restrictions upon the sale of arms and munitions of war in the United States. The resolution was as follows:

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That if the President finds the prohibition of sale of arms and munitions of war in the United States to those countries now engaged in armed conflict in the Chaco may contribute to the re-establishment of peace between those countries, and if after consultation with the governments of other American republics and with their cooperation, as well as that of such other governments as he may deem necessary, he makes proclamation to that effect, it shall be unlawful to sell, except under such limitations and exceptions as the President prescribes, any arms or munitions of war in any place in the United States to the countries now engaged in that armed conflict, or to any person, company or association acting in the interest of either country, until otherwise ordered by the President or by Congress.

"Sec. 2. Whoever sells any arms or munitions of war in violation of Section 1 shall, on conviction, be punished by a fine not exceeding \$10,000 or by imprisonment not exceeding two years, or both." (48 Stat. 811.)

The President accordingly issued a proclamation:

"Now, therefore, I, Franklin D. Roosevelt, President of the United States of America, acting under and by virtue of the authority conferred on me by the said joint resolution of Congress, do hereby declare and proclaim that I have found that the prohibition of the sale of arms and munitions of war in the United States to those countries now engaged in armed conflict in the Chaco may contribute to the re-establishment of peace between those countries, and that I have consulted with the governments of other American republics and have been

assured of the cooperation of such governments as I have deemed necessary as contemplated by the said joint resolution; and I do hereby admonish all citizens of the United States and every person to abstain from every violation of the provisions of the joint resolution above set forth, hereby made applicable to Bolivia and Paraguay, and I do hereby warn them that all violations of such provisions will be rigorously prosecuted.

"And I do hereby enjoin upon all officers of the United States charged with the execution of the laws thereof, the utmost diligence in preventing violations of the said joint resolution and this my proclamation issued thereunder, and in bringing to trial and punishment any offenders against the same.

"And I do hereby delegate to the Secretary of State the power of prescribing exceptions and limitations to the application of the said joint resolution of May 28, 1934, as made effective by this my proclamation issued thereunder." (48 Stat. 1744.)

This proclamation was revoked as to the sale of arms and munitions of war to Bolivia and Paraguay on November 14, 1935—effective from November 29, 1935.

In rendering the opinion in the case of the *United States v. Curtis-Wright Export Corporation et al.*, December 21, 1936, the Supreme Court said of the constitutionality of the joint resolution that,

"It is important to bear in mind that we are here dealing not alone with an authority vested in the President by an exertion of legislative power, but with such an authority plus the very delicate, plenary and exclusive power of the President as the sole organ of the Federal Government in the field of international relations—a power which does not require as a basis for its exercise an act of Congress, but which, of course, like every other governmental power, must be exercised in subordination to the applicable provisions of the Constitution.

"It is quite apparent that if, in the maintenance of our international relations, embarrassment—perhaps serious embarrassments—is to be avoided and success for our aims achieved, Congressional legislation which is to be made effective through negotiation and inquiry within the international field must often accord to the President a degree of discretion and freedom from statutory restriction which would not be admissible were domestic affairs alone involved.

"Moreover, he, not Congress, has the better opportunity of knowing the conditions which prevail in foreign countries, and especially is this true in time of war. He has his confidential sources of information. He has his agents in the form of diplomatic, consular and other officials."

"*At their own risk.*"—In general to a question at the press conference on October 10, 1935, Secretary of State

Hull said of American interests trading with belligerents "at their own risk":

"As I said to you gentlemen before, the language of the President's statement has thoroughly well-defined meaning, and every person should be able to grasp its meaning and its implications. Technically, of course, there is no legal prohibition—apart from the proclamation governing the export of arms—against our people entering into transactions with the belligerents or either of them. The warning given by the President in his proclamation concerning travel on belligerent ships and his general warning that during the war any of our people who voluntarily engage in transactions of any character with either of the belligerents do so at their own risk were based upon the policy and purpose of keeping this country out of war—keeping it from being drawn into war. It certainly was not intended to encourage transactions with the belligerents.

"Our people might well realize that the universal state of business uncertainty and suspense on account of the war is seriously handicapping business between all countries, and that the sooner the war is terminated the sooner the restoration and stabilization of business in all parts of the world, which is infinitely more important than trade with the belligerents, will be brought about.

"This speedy restoration of more full and stable trade conditions and relationships among the nations is by far the most profitable objective for our people to visualize, in contrast with such risky and temporary trade as they might maintain with belligerent nations.

"I repeat that our objective is to keep this country out of war." (Department of State, Press Releases, Vol. XIII, p. 303.)

The Secretary of State made further explanations on November 15, 1935:

"On October 10 I explained that the President's statement was based primarily upon the policy and purpose of keeping this country out of war, and that 'it certainly was not intended to encourage transactions with the belligerents.' I further explained that 'our people might well realize that the universal state of business uncertainty and suspense on account of the war is seriously handicapping business between all countries, and that the sooner the war is terminated the sooner the restoration and stabilization of business in all parts of the world, which is infinitely more important than trade with the belligerents, will be brought about.' The President, in a statement on October 20, further emphasized the spirit of this policy."

"The American people are entitled to know that there are certain commodities such as oil, copper, trucks, tractors, scrap iron, and scrap steel which are essential war materials, although not actually 'arms, ammunition, or implements of war', and that according to recent Government trade reports a considerably increased amount of these is being exported for war purposes.

This class of trade is directly contrary to the policy of this Government as announced in official statements of the President and Secretary of State, as it is also contrary to the general spirit of the recent neutrality act.

"The administration is closely observing the trend and volume of exports to those countries, and within a few days the Department of Commerce expects to have complete detailed lists of all commodities exported to the belligerents which will enable exact comparison with lists for the same period last year." (Ibid., p. 382.)

Proclamation of the United States, 29 February 1936.—The attitude of the United States in regard to the export and transportation of arms, ammunition, and implements of war is stated in the proclamation of 29 February 1936:

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

Whereas section 1 of a joint resolution of Congress, entitled "Joint resolution providing for the prohibition of the export of arms, ammunition, and implements of war to belligerent countries; the prohibition of the transportation of arms, ammunition, and implements of war by vessels of the United States for the use of belligerent states; for the registration and licensing of persons engaged in the business of manufacturing, exporting, or importing arms, ammunition, or implements of war; and restricting travel by American citizens on belligerent ships during war", approved August 31, 1935, provides as follows:

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That upon the outbreak or during the progress of war between, or among, two or more foreign states, the President shall proclaim such fact, and it shall thereafter be unlawful to export arms, ammunition, or implements of war from any place in the United States, or possessions of the United States, to any port of such belligerent states, or to any neutral port for transshipment to, or for the use of, a belligerent country.

"The President, by proclamation, shall definitely enumerate the arms, ammunition, or implements of war, the export of which is prohibited by this Act.

"The President may, from time to time, by proclamation, extend such embargo upon the export of arms, ammunition, or implements of war to other states as and when they may become involved in such war.

"Whoever, in violation of any of the provisions of this section, shall export, or attempt to export, or cause to be exported, arms, ammunition, or implements of war from the United States, or any of its possessions, shall be fined not more than \$10,000 or imprisoned not more than five years, or both, and the property, vessel, or vehicle containing the same shall be subject to the provisions

of sections 1 to 8, inclusive, title 6, chapter 30, of the Act approved June 15, 1917 (40 Stat. 223-225; U. S. C., title 22, secs. 238-245).

"In the case of the forfeiture of any arms, ammunition, or implements of war by reason of a violation of this Act, no public or private sale shall be required; but such arms, ammunition, or implements of war shall be delivered to the Secretary of War for such use or disposal thereof as shall be approved by the President of the United States.

"When in the judgment of the President the conditions which have caused him to issue his proclamation have ceased to exist he shall revoke the same and the provisions hereof shall thereupon cease to apply.

"Except with respect to prosecutions committed or forfeitures incurred prior to March 1, 1936, this section and all proclamations issued thereunder shall not be effective after February 29, 1936."

And whereas section 1 of a joint resolution of Congress extending and amending the joint resolution approved August 31, 1935, which was approved February 29, 1936, provides as follows:

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1 of the joint resolution (Public Resolution Numbered 67, Seventy-fourth Congress) approved August 31, 1935, be, and the same hereby is, amended by striking out in the first section, on the second line, after the word 'assembled' the following words: 'That upon the outbreak or during the progress of war between', and inserting therefor the words: 'Whenever the President shall find that there exists a state of war between'; and by striking out the word 'may' after the word 'President' and before the word 'from' in the twelfth line, and inserting in lieu thereof the word 'shall'; and by substituting for the last paragraph of said section the following paragraph: 'except with respect to offenses committed, or forfeitures incurred prior to May 1, 1937, this section and all proclamations issued thereunder shall not be effective after May 1, 1937.'"

And whereas my proclamation of October 5, 1935, issued pursuant to section 1 of the joint resolution approved August 31, 1935, declared that a state of war unhappily existed between Ethiopia and the Kingdom of Italy.

Now, therefore, I, Franklin D. Roosevelt, President of the United States of America, acting under and by virtue of the authority conferred on me by the said joint resolution as amended by the joint resolution of Congress approved February 29, 1936, do hereby proclaim that a state of war unhappily continues to exist between Ethiopia and the Kingdom of Italy; and I do hereby admonish all citizens of the United States or any of its possessions and all persons residing or being within the territory or jurisdiction of the United States or its possessions to abstain from every violation of the provisions of the joint resolution above set forth, hereby made effective and applicable to the export of arms, ammunition, or implements of war from any place in the United States or its possessions to Ethiopia or to the Kingdom of Italy, or to any Italian possession, or to any neutral port for transshipment to, or for the use of, Ethiopia or the Kingdom of Italy.

And I do hereby declare and proclaim that the articles listed below shall be considered arms, ammunition, and implements of war for the purposes of section 1 of the said joint resolution of Congress:

Category I

(1) Rifles and carbines using ammunition in excess of caliber .22, and barrels for those weapons;

(2) Machine guns, automatic or autoloading rifles, and machine pistols using ammunition in excess of caliber .22, and barrels for those weapons;

(3) Guns, howitzers, and mortars of all calibers, their mountings and barrels;

(4) Ammunition in excess of caliber .22 for the arms enumerated under (1) and (2) above, and cartridge cases or bullets for such ammunition; filled and unfilled projectiles or forgings for such projectiles for the arms enumerated under (3) above; propellants with a web thickness of .015 inch or greater for the projectiles of the arms enumerated under (3) above;

(5) Grenades, bombs, torpedoes and mines, filled or unfilled, and apparatus for their use or discharge;

(6) Tanks, military armored vehicles, and armored trains.

Category II

Vessels of war of all kinds, including aircraft carriers and submarines.

Category III

(1) Aircraft, assembled or dismantled, both heavier and lighter than air, which are designed, adapted, and intended for aerial combat by the use of machine guns or of artillery or for the carrying and dropping of bombs, or which are equipped with, or which by reason of design or construction are prepared for, any of the appliances referred to in paragraph (2) below;

(2) Aerial gun mounts and frames, bomb racks, torpedo carriers, and bomb or torpedo release mechanisms.

Category IV

(1) Revolvers and automatic pistols using ammunition in excess of caliber .22;

(2) Ammunition in excess of caliber .22 for the arms enumerated under (1) above, and cartridge cases or bullets for such ammunition.

Category V

(1) Aircraft, assembled or dismantled, both heavier and lighter than air, other than those included in Category III;

(2) Propellers or air screws, fuselages, hulls, wings, tail units, and under-carriage units;

(3) Aircraft engines, assembled or unassembled.

Category VI

(1) Livens projectors and flame throwers;

(2) Mustard gas (dichlorethylsulphide), lewisite (chlorovinylchlorarsine and dichlorodivinylchlorarsine), ethyldichlor-

arsine, methyldichlorarsine, ethyliodoacetate, brombenzylcyanide, diphenolchlorarsine, and dyphenolcyanoarsine.

And I do hereby enjoin upon all officers of the United States, charged with the execution of the laws thereof, the utmost diligence in preventing violations of the said joint resolution, and this my proclamation issued thereunder, and in bringing to trial and punishment any offenders against the same.

And I do hereby delegate to the Secretary of State the power of prescribing regulations for the enforcement of section 1 of the said joint resolution of August 31, 1935, as amended by section 1 of the joint resolution of Congress approved February 29, 1936, and as made effective by this my proclamation issued thereunder.

And I do hereby revoke my proclamation of October 5, 1935, concerning the export of arms, ammunition, and implements of war to Ethiopia and Italy, which was issued pursuant to the terms of section 1 of the joint resolution of Congress approved August 31, 1935, provided, however, that this action shall not have the effect of releasing or extinguishing any penalty, forfeiture or liability incurred under the aforesaid proclamation of October 5, 1935; and that the said proclamation shall be treated as remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture or liability.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the city of Washington this 29 day of February, in the year of our Lord nineteen hundred and thirty-six, and of the Independence of the United States of America the one hundred and sixtieth.

[SEAL]

FRANKLIN D ROOSEVELT

By the President:

CORDELL HULL

Secretary of State.

Department of State's position, 1935.—On November 10, 1935, an address of the Secretary of State Hull set forth his point of view upon the embargo on arms, saying:

"Any discussion of the avoidance of war, or of the observance of neutrality in the event of war, would be wholly incomplete if too much stress were laid on the part played in the one or the other by the shipment, or the embargoing of the shipment, of arms, ammunition, and implements of war. The shipment of arms is not the only way and, in fact, is not the principal way by which our commerce with foreign nations may lead to serious international difficulties. To assume that by placing an embargo on arms we are making ourselves secure from dangers of conflict with belligerent countries is to close our eyes to

manifold dangers in other directions. The imposition of an arms embargo is not a complete panacea, and we cannot assume that when provision has been made to stop the shipment of arms, which as absolute contraband have always been regarded as subject to seizure by a belligerent, we may complacently sit back with the feeling that we are secure from all danger. Attempts by a belligerent to exercise jurisdiction on the high seas over trade with its enemy, or with other neutral countries on the theory that the latter are supplying the enemy, may give rise to difficulties no less serious than those resulting from the exportation of arms and implements of war. So also transactions of any kind between American nationals and a belligerent may conceivably lead to difficulties of one kind or another between the United States and the belligerent. It was with these thoughts in mind that the President issued his timely warning that citizens of the United States who engage in transactions of any character with either belligerent would do so at their own risk. * * *

"Our own interest and our duty as a great power forbid that we shall sit idly by and watch the development of hostilities with a feeling of self-sufficiency and complacency when by the use of our influence, short of becoming involved in the dispute itself, we might prevent or lessen the scourge of war. In short, our policy as a member of the community of nations should be two-fold: first, to avoid being brought into a war, and second, to promote as far as possible the interests of international peace and good will. A virile policy tempered with prudent caution is necessary if we are to retain the respect of other nations and at the same time hold our position of influence for peace and international stability in the family of nations." (Department of State, Press Releases, Vol. XIII, p. 367.)

Travel in time of war.—Experience during the World War, 1914–1918, furnished examples of problems arising in consequence of the presence of neutral nationals upon belligerent vessels:

The Joint Resolution of August 31, 1935, provided:

SEC. 6. Whenever, during any war in which the United States is neutral, the President shall find that the maintenance of peace between the United States and foreign nations, or the protection of the lives of citizens of the United States, or the protection of the commercial interests of the United States and its citizens, or the security of the United States requires that the American citizens should refrain from traveling as passengers on the vessels of any belligerent nation, he shall so proclaim, and thereafter no citizen of the United States shall travel on any vessel of any belligerent nation except at his own risk, unless in accordance with such rules and regulations as the President shall prescribe: *Provided, however,* That the provisions of this section shall not apply to a citizen traveling on the vessel of a belligerent whose voyage was begun in advance

of the date of the President's proclamation, and who had no opportunity to discontinue his voyage after that date: *And provided further*, That they shall not apply under ninety days after the date of the President's proclamation to a citizen returning from a foreign country to the United States or to any of its possessions. When, in the President's judgment, the conditions which have caused him to issue his proclamation have ceased to exist, he shall revoke his proclamation and the provisions of this section shall thereupon cease to apply. (49 Stat. (Pt. I), 1084.)

Reply of the Department of State on loans.—In the letter of January 8, 1915, from Senator Stone, the Chairman of the Senate Committee on Foreign Relations to the Secretary of State reference was made to a complaint regarding:

"(13) *Change of policy in regard to loans to belligerents.*

"(a) General loans;

"(b) Credit loans."

In discussing this complaint, the Secretary of State said:

"(13) *Change of policy in regard to loans to belligerents.*

"War loans in this country were disapproved because inconsistent with the spirit of neutrality. There is a clearly defined difference between a war loan and the purchase of arms and ammunition. *The policy of disapproving of war loans affects all governments alike, so that the disapproval is not an unneutral act.* The case is entirely different in the matter of arms and ammunition, because prohibition of export not only might not, but in this case would not, operate equally upon the nations at war. Then, too, the reason given for the disapproval of war loans is supported by other considerations which are absent in the case presented by the sale of arms and ammunition. The taking of money out of the United States during such a war as this might seriously embarrass the Government in case it needed to borrow money and it might also seriously impair this Nation's ability to assist the neutral nations which, though not participants in the war, are compelled to bear a heavy burden on account of the war. and, again, a war loan, if offered for popular subscription in the United States, would be taken up chiefly by those who are in sympathy with the belligerent seeking the loan. The result would be that great numbers of American people might become more earnest partisans, having material interest in the success of the belligerent whose bonds they hold. These purchases would not be confined to a few, but would spread generally throughout the country, so that the people would be divided into groups of partisans, which would result in intense bitterness and might cause an undesirable, if not a serious, situation. On the other hand, contracts for and sales of contraband are mere matters of trade. The manufacturer, unless peculiarly senti-

mental, would sell to one belligerent as readily as he would to another. No general spirit of partisanship is aroused—no sympathies excited. The whole transaction is merely a matter of business.

"This Government has not been advised that any general loans have been made by foreign governments in this country since the President expressed the wish that loans of this character should not be made." (Foreign Relations, U. S. 1914 Supplement, p. xii.)

The Secretary of State had early in the World War sent the following telegram to J. P. Morgan and Company.

"DEPARTMENT OF STATE
Washington, August 15, 1914.

"Inquiry having been made as to the attitude of this Government in case American bankers are asked to make loans to foreign governments during the war in Europe, the following announcement is made:

"There is no reason why loans should not be made to the governments of neutral nations, but in the judgment of this Government, loans by American bankers to any foreign nation which is at war are inconsistent with the true spirit of neutrality."

W. J. BRYAN."

(Ibid., p. 580.)

The Government of the United States was obliged to take facts into consideration. "The true spirit of neutrality" which Mr. Bryan had indicated on August 15, 1914, as inconsistent with negotiating of loans by American bankers to belligerents was not supported by any law. Law usually rests upon long experience. As was evident in the press notice of March 31, 1915, the Government had not found itself justified in "interposing objection" and gradually nearly all restraints were removed. Some may say that the economic motive was more potent than the moral or some other motive, but in matters of this kind, it is essential to recall that the state is a political organization and its action must ultimately rest upon the forces conceived to be working for the public well-being and these are many and varied.

Statement on loans in 1916.—Queries were raised in regard to loans to belligerents in 1916 also. On this

subject, Mr. Polk, then Counselor for the Department of State, said:

"War loans in this country were disapproved because deemed inconsistent with the spirit of neutrality. At the very beginning of the present war this Government announced that in its judgment loans by American bankers to any foreign nation which is at war is inconsistent with the true spirit of neutrality and refused in any way to facilitate such loans.

"While expressing its position with regard to these loans, there was no way in which the Government could prevent private loans being made to the belligerents since such loans were in violation of no law of the United States and there was no way in which those making the loans could be prosecuted. The Government has in no way facilitated or encouraged any loans that may have been made.

"The State Department has from time to time received information, directly or indirectly, to the effect that belligerent nations had arranged with banks in the United States for credits for various sums. While loans to belligerents have been disapproved, this Government has not felt that it was justified in interposing objection to the credit arrangements which have been brought to its attention. It has neither approved these credits nor disapproved. It has simply taken no action in the premises and expressed no opinion." (Foreign Relations, 1916, Supplement, p. 8.)

Limitation of loans proposal, 1917.—The problem of loans in various forms became more and more serious as the war progressed. The attempts to close the avenues of credit were only in part successful. In a letter of August 18, 1917, to the Secretary of State the British Embassy outlined in detail a plan to which he hoped the United States would adhere. In this letter he says:

"It is a matter of the gravest concern to His Majesty's Government, at the present time, that supplies of monetary credit—one of the most vital forms of all aids—continue to reach the enemy through neutral countries, as it cannot be doubted that aid in this form must prolong the war, and so be the direct cause of further loss of life and unnecessary suffering.

"As you are well aware, the enemy has only four possible methods by which he can pay for the supplies of goods and other aids which he obtains from neutral countries. These are (a) to export goods or services; (b) to export gold; (c) to obtain credits from neutrals; (d) to realise his existing investments in neutral countries.

"It is obvious that if it is possible to prevent the enemy obtaining credit from neutrals or realising his investments through them, he will be driven, either to export more goods (which will be difficult), or to export gold (which it is unlikely that he will

dare to do in sufficient quantity) or finally to decrease or cease his purchases abroad. His Majesty's Government therefore consider that the moment has come for bringing pressure to bear upon neutrals in order to deter them from rendering financial assistance to the enemy, and they suggest the use for this purpose of the very powerful weapon which the Allies possess in the control of the paramount financial markets of New York, London and Paris, as well as Milan and Petrograd.

"His Majesty's Government propose that a notice should be issued in the neutral European press in the following terms:

"The Governments of France, Great Britain, Italy, Russia and United States have decided that it may become inexpedient for banking houses in their respective territories to continue to have dealings with any banking house in which engages directly or indirectly in:

"1. Granting of any loan, credit or overdraft or increase of any existing loan, credit or overdraft to an enemy of any of those five countries;

"2. The subscription to or purchase of any loan issued after this date by an enemy of any of those five countries;

"3. The purchase from or sale on behalf of an enemy of any of those five countries of any bond or certificate issued by the Government, or by any corporation or company in any of those five countries; or of any dividend warrant or coupon payable in any of those five countries, or of any note, bill of exchange or draft payable in any of those five countries;

"4. The collection, discounting or negotiation on behalf of an enemy of any of those five countries of any bond, note, bill of exchange, cheque, draft, dividend warrant or coupon payable in any of those five countries;

"5. Transmission by any means whatever of any document, letter, message or advice of any kind relating to any of above transactions." (Foreign Relations, U. S., 1917 Supplement 2, p. 924.)

On September 4, 1917, the Attorney General in a communication to the Secretary of State in regard to the British plan said:

"I understand the British proposition to be substantially as follows:

"That the United States should direct its citizens and banking houses in the United States to discontinue all intercourse, direct or indirect, with any banking house in another country which has any dealings with the class of persons defined as "enemy" by the United States; in other words, if a Brazilian bank A in Brazil should deal with B a German doing business within Brazil and also within Germany (and therefore an "enemy"), the United States should direct a United States citizen C to have no dealings with the Brazilian bank A."

"The mere statement of the proposition, in my opinion, demonstrates the inadvisability, of any assent by the United States to such a course of action. It would amount clearly to the most

extreme form of black list of citizens of neutral nations—restricting American dealings with such neutral citizens simply because the latter might also be entering into transactions with German enemies perfectly legitimate under the law of the neutral nation. Of course, if the trade was to be carried on by a United States citizen with a neutral citizen as an indirect means of trading with the German enemy, it would be unlawful, under the law of the United States as at present constituted, and would be a criminal transaction under the terms of the pending Trading with the Enemy bill.

"I can not believe that it would be wise or just for this Government to assent to the proposition laid before you by the British Embassy." (Ibid., p. 941.)

Bonds, loans, etc. during the period of war.—The practice of neutral states in regard to limiting financial transactions with belligerents has varied greatly. Sometimes a single state has not maintained the same attitude throughout a war. The Joint Resolution of Congress of the United States of February 29, 1936, in Section 1a, provided that:

"Whenever the President shall have issued his proclamation as provided for in section 1 of this Act, it shall thereafter during the period of the war be unlawful for any person within the United States to purchase, sell, or exchange bonds, securities, or other obligations of the government of any belligerent country, or of any political subdivision thereof, or of any person acting for or on behalf of such government, issued after the date of such proclamation, or to make any loan or extend any credit to any such government or person: PROVIDED, That if the President shall find that such action will serve to protect the commercial or other interests of the United States or its nationals, he may, in his discretion, and to such extent and under such regulation as he may prescribe, except from the operation of this section ordinary commercial credits and short time obligations in aid of legal transactions and of a character customarily used in normal peace-time commercial transactions.

"The provisions of this section shall not apply to a renewal or adjustment of such indebtedness as may exist on the date of the President's proclamation." (49 Stat. 1153.)

Restrictions on travel of nationals.—As a state is in some degree responsible for the conduct and for the safety of its nationals, the state must have a reasonable control of the movements of its citizens. The requirement of some sort of registration before departure from the state's jurisdiction, travel permits or passport restrictions, may furnish sufficient control.

The restriction upon the issue of passports may extend to refusal to grant a passport or to grant only under conditions. During the World War, restrictions upon the issue of American passports became more and more detailed and the Secretary of State might refuse a passport "in his discretion."

In general a state may regulate the departure of its nationals from its jurisdiction, but is not under obligations to prohibit citizens from traveling on the high seas or in foreign states which respect the request of the passport.

On April 17, 1915, in a notice issued by the Department of State to American citizens who contemplated visiting belligerent countries it was said:

"It is believed that governments of countries which are in a state of war do not welcome aliens who are traveling merely for curiosity or pleasure. Under the passport regulations prescribed by the President January 12, 1915, passports issued by this Government contain statements of the names of countries which the holders expect to visit and the objects of their visits thereto. The Department does not deem it appropriate or advisable to issue passports to persons who contemplate visiting belligerent countries merely for 'pleasure,' 'recreation,' 'touring,' 'sight-seeing,' etc." (9 American Journal of International Law, Special Supplement, July, 1915, p. 391.)

In a letter of December 23, 1915, in regard to the Rules of December 17, 1915, governing the granting and issuing of passports in the United States, Mr. Lansing, Secretary of State, said:

"The object of the President's order is not to interfere with travel from this country, but to prevent the use of passports by persons who may obtain them by improper representations or for fraudulent purposes." (Foreign Relations, U. S. 1915 Supplement, p. 914.)

Mr. Bryan, the Secretary of State of the United States, in the first year of the World War, after the sinking of the *Falaba* and the *Lusitania*, in the note of May 13, 1915, after crediting Germany with the purpose to observe law, said:

"The Government of the United States has been apprised that the Imperial German Government considered themselves to be obliged by the extraordinary circumstances of the present war and the measures adopted by their adversaries in seeking to cut Germany off from all commerce, to adopt methods of retaliation which go much beyond the ordinary methods of warfare at sea, in the proclamation of a war zone from which they have warned neutral ships to keep away. This Government has already taken occasion to inform the Imperial German Government that it can not admit the adoption of such measures or such a warning of danger to operate as in any degree an abbreviation of the rights of American ship-masters or of American citizens bound on lawful errands as passengers on merchant ships of belligerent nationality; and that it must hold the Imperial German Government to a strict accountability for any infringement of those rights, intentional or incidental. It does not understand the Imperial German Government to question those rights. It assumes, on the contrary, that the non-combatants, whether they be of neutral citizenship or citizens of one of the nations at war, can not lawfully or rightfully be put in jeopardy by the capture or destruction of an unarmed merchantman, and recognize also, as all other nations do, the obligation to take the usual precaution of visit and search to ascertain whether a suspected merchantman is in fact of belligerent nationality or is in fact carrying contraband of war under a neutral flag." * * *

"American citizens act within their indisputable rights in taking their ships and in traveling wherever their legitimate business calls them upon the high seas, and exercise those rights in what should be the well-justified confidence that their lives will not be endangered by acts done in clear violation of universally acknowledged international obligations, and certainly in the confidence that their own Government will sustain them in the exercise of their rights.

"There was recently published in the newspapers of the United States, I regret to inform the Imperial German Government, a formal warning, purporting to come from the Imperial German Embassy at Washington, addressed to the people of the United States, and stating, in effect, that any citizen of the United States who exercise his right of free travel upon the seas would do so at his peril if his journey should take him within the zone of waters within which the Imperial German Navy was using submarines against the commerce of Great Britain and France, notwithstanding the respectful but very earnest protest of his Government, the Government of the United States. I do not refer to this for the purpose of calling the attention of the Imperial German Government at this time to the surprising irregularity of a communication from the Imperial German Embassy at Washington addressed to the people of the United States through the newspapers, but only for the purpose of pointing out that no warning that an unlawful and inhumane act will be committed can possibly be accepted as an excuse or palliation for that act or as an abatement of the responsibility for its commission." (Foreign Relations, U. S., 1915, Supplement, p. 394.)

The warning to which reference was made above is as follows and appeared in New York papers as an advertisement on May 1, 1915, the advertised sailing date of the Lusitania:

"Travelers intending to embark on the Atlantic voyage are reminded that a state of war exists between Germany and her allies and Great Britain and her allies; that the zone of war includes the waters adjacent to the British Isles; that, in accordance with formal notice given by the Imperial German Government, vessels flying the flag of Great Britain, or of any of her allies, are liable to destruction in those waters and that travelers sailing in the war zone on ships of Great Britain or her allies do so at their own risk.

IMPERIAL GERMAN EMBASSY,
Washington, D. C.

The note of May 3, 1915, closes with the statement:

"Expressions of regret and offers of reparation in case of the destruction of neutral ships sunk by mistake, while they may satisfy international obligations, if no loss of life results, cannot justify or excuse a practice, the natural and necessary effect of which is to subject neutral nations and neutral persons to new and immeasurable risks.

"The Imperial German Government will not expect the Government of the United States to omit any word or any act necessary to the performance of its sacred duty of maintaining the rights of the United States and its citizens and of safeguarding their free exercise and enjoyment." (Foreign Relations, U. S., 1915, Supplement, p. 396.)

Retaliation and neutral passengers.—It has been common to affirm that neutrals are liable to incidental consequences of retaliatory acts aimed by one belligerent against another. Acts of a retaliatory character may not, however, be directed toward a neutral with the hope of incidental injury to a belligerent.

In a note to the Secretary of State the German Ambassador in 1916, after the establishing of the war zone about Great Britain, it was explained that:

"The German submarine war against England's commerce at sea, as announced on February 1, 1915, is conducted in retaliation of England's inhuman war against Germany's commercial and industrial life. It is generally recognized as justifiable that retaliation may be employed against acts committed in contravention of the law of nations. Germany is enacting such retalia-

tion because it is England's endeavor to cut off all imports from Germany by preventing even legal commerce of the neutrals with her and thereby subjecting the German population to starvation. In answer to these acts Germany is making efforts to destroy England's commerce at sea, at least as far as it is carried on by enemy vessels. Germany has notwithstanding limited her submarine warfare, because of her long-standing friendship with the United States and because by the sinking of the *Lusitania*, which caused the death of citizens of the United States, the German retaliation affected neutrals which was not the intention, as retaliation should be confined to enemy subjects.

"The Imperial German Government having subsequent to the sinking of the *Lusitania* issued to its naval officers the new instructions which are now prevailing, expresses profound regret that citizens of the United States suffered by that event and, recognizing its liability therefor, stands ready to make reparation for the life of the citizens of the United States who were lost, by the payment of a suitable indemnity." (Foreign Relations, U. S., 1916 Supplement, p. 171.)

In a telegram of July 21, 1915, the American Ambassador in Germany to the Secretary of State referred to giving advance notice of the sailing of steamers from the United States.

"In order that such advance notification may take place in all cases with certainty, the schedule of the American steamer must be made known some weeks before the arrival of the ship in the war zone. It would be best if the notification were made early enough to have the German submarines acquainted with the name and schedule of the steamer one month before the arrival of the steamer in the war zone. Such an early notification can scarcely present insuperable difficulties, as the sailings of the steamers making regular journeys are generally fixed for a very long period in advance.

GERARD."

(*Ibid.*, 1915 Supplement, p. 482.)

In a reply of July 23, the Secretary of State said,

"Department has made arrangements with the customs collector at port of New York, through Department of Commerce, to be notified immediately upon the departure of American passenger steamers, and will forward such information to you at once. Department suggests that you make arrangements to telephone this information direct to the German Admiralty, thus saving time. Department is also sending you by mail the advertised schedule of sailing of these ships which, however, may be subject to change." (*Ibid.*, p. 484.)

Restriction on Act of February 29, 1936.—The Joint Resolution of February 29, 1936, in regard to the embargo

of arms, ammunition, and implements of war has not been interpreted in all its applications. Questions have been raised as to whether it applies in a civil strife.

Acting Secretary of State, Mr. William Phillips, on August 7, 1936, explained the attitude of the Government.

"While I realize that all of our officers have fully appreciated the necessity for maintaining a completely impartial attitude with regard to the disturbances in Spain, and that such an attitude has at all times been maintained by them, it may be well for them to have a summing up of what this Government's position thus far has been and will continue to be.

"It is clear that our Neutrality Law with respect to embargo of arms, ammunitions and implements of war has no application in the present situation, since that applies only in the event of war *between or among nations*. On the other hand, in internal affairs in other countries, either in time of peace or in the event of civil strife, this Government will, of course, scrupulously refrain from any interference whatsoever in the unfortunate Spanish situation. We believe that American citizens, both at home and abroad, are patriotically observing this well-recognized American policy." (Press Releases, Department of State, vol. XV, p. 152.)

Later in correspondence with manufacturers interested in the exportation of arms and ammunition to Spain it was further stated by the Department of State:

"In reply to your inquiry, I beg to say that the attitude and policy of this Government relative to the question of intervention in the affairs of other sovereign nations has been well known especially since the conclusion of the Montevideo Treaty of 1933.

"For your further information, I enclose a copy of a circular telegraphic instruction which was recently sent to certain consular representatives in Europe and which has not been made public up to the present.

"I desire to call especial attention to the reference therein to our neutrality laws and to the fact that they have no application in the present Spanish situation, since they apply only in the event of war between or among nations.

"Furthermore, I invite your attention with equal force to the reference, in the same circular instruction, to this Government's well established policy of non-interference with internal affairs in other countries, as well as the statement that this Government will, of course, scrupulously refrain from any interference whatsoever in the unfortunate Spanish situation. At the same time the Department expressed the opinion that American citizens, both at home and abroad, are patriotically observing this recognized American policy." (Ibid., p. 177.)

Spanish attitude on non-intervention, 1936.—The first delegate of Spain, M. Alvarez del Vayo, in the sixth plenary meeting of the Assembly of the League of Nations, September 25, 1936, set forth at length the attitude of the established government of Spain upon the policy of restriction by foreign states of export of war material to Spain. The central paragraphs of this address to the Assembly were as follows:

"The policy of non-intervention! I am speaking here before an assembly of statesmen, of representatives of Governments, on whose shoulders rests the responsibility for well-being and order in their respective countries. Who among you could fail to understand why it is that we, the men responsible for the future of Spain, for the future of the Spanish people, the whole Spanish people, must perforce regard so-called non-intervention as a policy of intervention detrimental to the constitutional and responsible Government? Who among you could fail to recognize that we cannot allow ourselves to be placed on the same footing as those who, breaking their solemn oath to the Republic, have risen in arms to destroy the constitutional liberty of our country?

"Who, among the statesmen present in this Assembly, could accept the right of generals, who have taken their oath to the Constitution, to attempt to overthrow that Constitution by bringing into the country thousands of foreign troops from another continent?

"I acknowledge the noble and generous purpose that actuated the proposal for non-intervention. But I must also, and with deep bitterness, point to its disastrous results, disastrous both to my own country and to the future of international cooperation. The legal monstrosity of the formula of non-intervention is manifest. That formula, as I have said, placed on the same footing the lawful Government of my country and the rebels, whom any Government worthy of the name is not only entitled but bound to suppress and punish. From the juridical point of view, non-intervention, as applied to Spain, represents an innovation in the traditional rules of international law, for it means withholding means of action from a lawful Government.

"But if we examine the actual way in which the formula of non-intervention has been applied and the results that have ensued, can we still call it 'non-intervention'? Non-intervention should consist wholly in ignoring the internal situation of a country and in retaining the full juridical and practical validity of the commercial agreements previously concluded.

"We would accept a strict policy of non-intervention. We have asked no one to intervene or to help. But when the normal commercial relations with Spain are suddenly interrupted, when the export of war material for the lawful Government suddenly stops, when contracts concluded with the Spanish Government before the rebellion are cancelled, then we must affirm once again

that this policy of non-intervention has been applied solely to the detriment of the lawful Government and, consequently, to the advantage of the rebels.

"To undertake not to authorise the sending of war material to rebels who have risen against a lawful and recognised friendly Government—that is to say, to undertake not to engage in a disguised form of attack against a lawful Government—merely shows to what depths we have sunk in carrying out international obligations. Such an undertaking does not deprive the rebels of anything they could legitimately have obtained; it involves no more than a promise not to violate one of the most elementary obligations.

"On the other hand, to prohibit the export of war materials to a lawful Government is to deprive it of the essential means of maintaining law and order within its territory, to say nothing of the blow struck at normal trade relations through a ban on the purchase of war materials by a lawful Government. Hitherto, it has been unanimously recognised that such transactions were part of the normal trade relations between countries.

"In practice, the so-called policy of non-intervention amounts to a direct and effective intervention on behalf of the rebels." (League of Nations Official Journal, Spec. Supplement No. 155, Records of the Seventeenth Ordinary Session of the Assembly. [Sixth Plenary Meeting. Sept. 25, 1936], p. 49.)

League of Nations discussion.—The first delegate, M. Litvinoff, of the U. S. S. R., speaking in the seventeenth ordinary session of the Assembly, September 28, 1936, did not regard neutrality as a safe defence under the existing conditions. He said:

"I have not the slightest doubt that even the most politically inexperienced reader of newspapers knows which and how many are the countries whose aggressiveness makes them dangerous, if he is only familiar with the speeches and writings of the rulers of those countries. There are also some countries which strive to seek salvation in neutrality. If they really believe that it would be sufficient for them to write the word 'neutrality' on their frontiers, there to arrest the flames of war, and if they have forgotten the recent lessons of history as to breaches of even internationally recognized neutralities, that is their affair. We have the right, at least, to ask them already to observe their neutrality to-day, when some are preparing plans of aggression and others plans for self-defence. Unfortunately, they are often already placing their neutrality at the service of the forces of aggression." (*Ibid.* [Eighth Plenary Meeting. Sept. 28, 1936], p. 61.)

Résumé.—On many of the matters which were in 1914 considered as unquestionably within the sphere of neutral rights, the United States took positive positions.

The United States had even announced that it would act as the "champion of neutrality." A long series of notes between the belligerents and the United States set forth many of the doctrines of neutrality for which the United States affirmed support. This verbal support acted as a deterrent upon the belligerents for a short time only, and disregard of what had formerly been considered neutral rights became more and more common, though notes were exchanged after the event. The replies to the notes of the United States to the belligerents seem to have been deliberately postponed in some cases and before the replies had been received, new events changed conditions.

In these contentions from August 4, 1914, to April 6, 1917, the United States often cited the earlier principles and the precedents of neutrality cases. The Department of State called attention to the international law of neutrality and demanded that it be respected. The conventions adopted at The Hague in 1907 were cited as showing the rights and obligations of neutrals.

In general, the attitude had been that in time of war neutrals should be inconvenienced as little as possible, and if states decided to go to war, the burdens of the war should rest upon the belligerents.

The determination as to whether there was a state of war was in accord with the Hague Convention III of 1907, Article 1, to rest upon the belligerent, and in accord with Article 2 should not take effect as regards neutrals "until after the receipt of a notification" though in case of doubt, if the fact was clearly known, absence of notification would not void the effect of the existence of war.

The neutral was not presumed to act upon the hypothesis that a state of war existed prior to the declaration. The preamble of Convention III had specifically

said that it was "important for the maintenance of pacific relations that hostilities should not commence without previous warning." In the arguments in support of this Convention it was urged that without such a Convention the effects of the war would be thrown back upon the time of peace, and uncertainty as to the time when war commences would again disturb relations and introduce the uncertainty that had existed for two hundred years before.

It was also maintained by the United States that the rights and obligations of the neutrals should be those generally accepted under international law in August 1914. The statement as to many of these was embodied in the neutrality proclamation of the United States of August 4, 1914.

The Joint Resolutions of August 31, 1935, together with the extensions and amendments of February 29, 1936, placed upon the United States obligations beyond those of international law in regard to the control of the sale and export of war material, financial transactions, submarines, travel of nationals, etc.

CONCLUSION

From August 4, 1914, to April 6, 1917, the United States, as a neutral state, followed its long-established neutrality policy¹ which was in general accord with accepted international law.

The Joint Resolution of February 29, 1936, embodied a nationalistic policy in many respects divergent from the prior policy of the United States and from the generally accepted doctrines of international law.

The change in 1935-36 to a doctrine for the most part nationalistic has placed nationals of the United States under restrictions beyond those imposed by international law.